

## UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT:	Douglas S. Makofka, et al.	GROUP ART UNIT:	2623
APPLN. NO.:	09/736,617	EXAMINER:	Salce, Jason P.
FILED:	December 13, 2000	Confirmation No.:	8900
TITLE:	<b>CONDITIONAL ACCESS FOR FUNCTIONAL UNITS</b>		

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Sir:

In response to the Final Office Action mailed from the U.S. Patent and Trademark Office on June 13, 2008, Applicant requests review of the final rejection in the above-identified application. This request is being filed with a Notice of Appeal and required fee. The Commissioner is hereby authorized to charge any additional fees which may be required at any time during the prosecution of this application without specific authorization, or credit any overpayment, to Deposit Account No. 50-2117.

No amendments are being filed with this request. The review is requested for the reasons stated in the remarks below.

### **STATUS OF CLAIMS**

Claims 1, 3-8, 10-15, and 17-21 are pending in this application.

The final Office Action dated June 13, 2008, rejects claims 1, 3-6, 8, 10-13, 15, and 17-21 under 35 U.S.C. § 103(a) as being unpatentable over Safadi et al. (International Application Published Under PCT WO 00/50978) (hereinafter “Safadi”) in view of U.S. Patent No. 6,393,562 to Maillard et al. (hereinafter “Maillard”). The Office Action also rejects claims 7 and 14 under 35 U.S.C. § 103(a) as being unpatentable over Safadi in view of U.S. Patent No. 6,305,019 to Dyer (hereinafter “Dyer”). The Office Action rejects claim 9 under 35 U.S.C. § 103(a) as being unpatentable over Safadi in view of U.S. Patent No. 6,157,719 to Wasilewski et al. (hereinafter “Wasilewski”).

### **REMARKS**

At page 11 of the final Office Action, claim 9 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Safadi in view of Wasilewski. The rejection of claim 9 is moot, since claim 9 was previously canceled (see Applicant’s amendment dated March 22, 2005).

The rejections of claims 1, 3-8, 10-15, and 17-21 under 35 U.S.C. § 103(a) are respectfully traversed.

Independent claims 1 and 8 stand rejected as allegedly unpatentable over Safadi in view of Maillard. Referring to independent claims 1 and 8, the final Office Action asserts (at page 5) the following:

Safadi discloses receiving first information comprising a plurality of functional unit identifiers (see Page 6, Lines 10-12 for creating a fingerprint (digital signature) for each software object) and one or more tier requirements respectively related to each functional unit identifier (see Page 7, Lines 3-4 for associating a fingerprint for each software object with a service tier).

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Safadi also discloses interacting with the functional unit (see Page 11, Lines 14-17 for downloading or utilizing an object).

Independent claim 15 also stands rejected as allegedly unpatentable over Safadi in view of Maillard. The final Office Action asserts (at page 8) the following:

Referring to claim 15, Safadi discloses determining first and second information ((see Page 6, Lines 10-12 and Page 7, Lines 3-4 for determining the first information (fingerprint and service tier (grouping of services)) and Page 7, Lines 27-29 for determining the second information (EMM)) to modify authorization of a remotely located and functional unit (see Page 11, Line 32 through Page 12, Line 14 for authorizing downloading a remotely located software object and Page 14, Lines 8-12 for authorizing access to the remotely located software object that has been approved for download).

The cited portions of Safadi fail to disclose functional units. Rather, each of the cited sections of Safadi refers to software objects, which is a different concept than functional units. The person skilled in the art will appreciate that tiers had been used (e.g., EMM or ECS) to control video programs, and the Safadi reference applies the tier concept to software code. Applicants' presently claimed invention, however, applies tiers to functional units, which are not identical to either software or programs. Since Safadi did not teach or disclose any extension of the tier concept to non-program concepts, Safadi does not disclose functional units.

It appears that the Examiner assumes that a software object is identical to a functional unit, which is not the case. Safadi fails to disclose functional units, or the use of tiers in connection with functional units or functional unit identifiers. A functional unit is not necessarily embodied in software, and often is not embodied in software. Functional units are not software objects and require, for example, different machinery.

Maillard also fails to disclose each of the limitations of independent claims 1, 8, and 15. For at least the aforementioned reasons, independent claims 1, 8, and 15 are patentable over Maillard and each of the other cited references, either taken alone or in combination. Thus, the Examiner should withdraw the § 103 obviousness rejection as to independent claims 1, 8, and 15.

Claims 3-7, 10-14, and 17-21 depend, respectively, from independent claims 1, 8, and 15. For the previously stated reasons, independent claims 1, 8, and 15 are allowable. Since any claim that depends from an allowable independent claim is also allowable, the Applicants respectfully submit that the Examiner should also withdraw this rejection as to dependent claims 3-7, 10-14, and 17-21.

**Conclusion**

In view of the foregoing discussion, the Applicants believe that claims 1-3, 8, 10-15, and 17-21 are allowable over the cited art. The Applicants respectfully submit that all pending claims are in full condition for allowance.

Claims not specifically mentioned above are allowable due to their dependence on an allowable base claim. In light of the arguments presented above, it is respectfully submitted that all pending claims are in condition for allowance. Reconsideration and withdrawal of the final rejection of the claimed invention is respectfully requested.

Respectfully submitted,  
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Date: September 15, 2008

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